



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 13 2013

OFFICE OF WATER

Mr. Daniel C. Snyder
Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence Street
Eugene, OR 97401

Re: Response for Freedom of Information Act Request No. EPA-HQ-2013-009479

This letter is in reference to your August 28, 2013 Freedom of Information Act ("FOIA") request, EPA-HQ-2013-009479, to the U.S. Environmental Protection Agency ("EPA" or "Agency"), in which you requested on behalf of the Community Association for the Restoration of the Environment ("CARE") the following:

"All records related to an agreement between the EPA and American Farm Bureau Federation wherein EPA agreed not to produce to any FOIA requester information that is the subject matter of the pending litigation (civil action number 0:13-cv-01751-RHK-TNL), as well as all records related to any EPA directive, rule, policy, agreement, stipulation or order directing or requesting EPA personnel to redact or withhold records responsive to a properly made FOIA request because of, or by virtue of, the pending litigation."

Enclosed you will find 22 records that are responsive to your request. The enclosed documents, along with the interim response dated November 14, 2013, completes EPA's response to your request. The EPA is denying your request for certain documents, or portions of documents, which are exempt from disclosure by virtue of 5 U.S.C. § 552(b)(5) ("inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency") and 40 C.F.R. § 2.105(a)(5) ("inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than in litigation with the affected agency").

The withheld documents include attorney-client communications, attorney work products, and deliberative information. A list of the withheld material along with the basis (i.e. exemptions) for withholding is provided below.


You may appeal this partial denial to the National Freedom of Information Office, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, D.C. 20460, Email: hqfoia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand

delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W. Room 6416J, Washington D.C., 20004.

Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the FOIA number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Please contact Becky Mitschele at (415) 972-3492 should you have any questions concerning this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Deborah Nagle", written in a cursive style.

Deborah G. Nagle, Director
Water Permits Division

Enclosures:

22 responsive releasable records
List of withheld records

List of Withheld Material for FOIA Request EPA-HQ-2013-009479

Date Range	Description of Document/Document Category	Exemption	Approximate (Approx.) Number of Documents	Approx. Number of Pages
7/1/2013 to 8/28/2013	<p>Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than in litigation with the affected agency.</p> <p>These records include:</p> <ul style="list-style-type: none"> • Internal, pre-decisional drafts of records discussing the subject matter of the agreement and EPA's decision to defer related FOIA requests for such information. These records are being withheld because they contain comments, legal analysis, and subjective evaluations that would reveal agency's evaluative process. • Email records that include internal advice, recommendations, and/or subjective evaluations that refer or relate to the subject matter of the agreement and EPA's decision to defer related FOIA requests for such information. These records include pre-decisional discussions between agency staff or discussions that would reveal the agency's evaluative process. Some of these records include confidential communications between an EPA attorney and EPA staff seeking legal advice and legal analysis of the effect of the litigation. • Documents, including drafts of those documents, prepared by an attorney in contemplation of litigation. 	5 U.S.C. § 552(b) and 40 C.F.R. § 2.105(a)	288	864